

# STITES & HARBISON PLLC

ATTORNEYS

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**RECEIVED**

**MAY 30 2006**

**PUBLIC SERVICE  
COMMISSION**

Mark R. Overstreet  
(502) 209-1219  
(502) 223-4387 FAX  
moverstreet@stites.com

May 30, 2006

**HAND DELIVERED**

Ms. Beth O'Donnell  
Executive Director  
Public Service Commission of Kentucky  
211 Sower Boulevard  
P.O. Box 615  
Frankfort, Kentucky 40602-0615

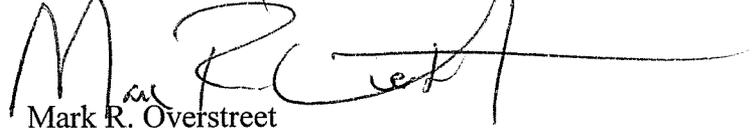
**RE: P.S.C. Case No. 2006-00198**

Dear Ms. O'Donnell:

Enclosed please find Kentucky Alltel, Inc.'s Motions to Dismiss, For Discovery and for Injunctive Relief and its Answer in the above matter.

Sincerely yours,

STITES & HARBISON, PLLC



Mark R. Overstreet

cc: John E. Selent

KE242:00KE2:14202:1:FRANKFORT

COMMONWEALTH OF KENTUCKY  
BEFORE THE PUBLIC SERVICE COMMISSION

RECEIVED

MAY 30 2006

PUBLIC SERVICE  
COMMISSION

In the Matter of:

MOUNTAIN RURAL TELEPHONE )  
COOPERATIVE CORPORATION, INC. )  
COMPLAINANT )  
 )  
V. )  
 )  
KENTUCKY ALLTEL, INC. )  
RESPONDENT )

CASE NO. 2006-00198

MOTION TO DISMISS, FOR DISCOVERY, AND FOR INJUNCTIVE RELIEF AND ANSWER

\*\*\*\*\*

Kentucky Alltel, Inc. ("Kentucky Alltel") states as follows in support of its Motion to Dismiss, for Discovery, and for Injunctive Relief and Answer to the Formal Complaint ("Complaint") filed by Mountain Rural Telephone Cooperative Corporation, Inc., d/b/a Mountain Telephone ("Mountain Rural" or "Complainant"):

**I. Motion to Dismiss, for Discovery, and for Injunctive Relief**

1. Mountain Rural asserts a claim with respect to charges for certain traffic exchanged between the parties. Calls between Mountain Rural and Kentucky Alltel exchanges are non-local. Consequently, Kentucky Alltel offers its subscribers an optional local calling plan whereby Kentucky Alltel subscribers can call end users in Mountain Rural's territory as if the call were local ("ACS"). In fact, some carriers in Kentucky have long-standing arrangements not to charge non-traffic sensitive rates (i.e., carrier common line) to minutes associated with ACS plans as discussed in greater detail below.

2. In this instance, a Kentucky Alltel customer who subscribes to Kentucky Alltel's ACS plan calls an end user in Mountain Rural's territory. The call is comprised of traffic sensitive and non-traffic-sensitive rate elements. First, traffic sensitive rate elements include local switching, local transport facilities and termination and tandem switching. Traffic sensitive rates are set forth in carriers' access tariffs. Mountain Rural's Complaint includes a claim for traffic sensitive charges, and Kentucky Alltel does not dispute the charges. Kentucky Alltel inadvertently failed to remit payment to Mountain Rural for these charges due to the parties' ongoing traffic dispute with respect to non-traffic sensitive charges discussed below. Upon realizing this error, Kentucky Alltel remitted payment to Mountain Rural on May 17, 2006 in the amount of \$60,403.49. (See payment information attached as Exhibit A.) Accordingly, Kentucky Alltel requests that the portions of Mountain Rural's Complaint addressing traffic sensitive charges be dismissed with prejudice as the claim has been satisfied. Accordingly, Kentucky Alltel will address Mountain Rural's remaining claim for non-traffic sensitive charges.
3. Second, non-traffic sensitive rate elements include carrier common line charges ("CCL"). CCL charges in the Commonwealth are determined on a per line basis. According to the terms of its tariff, Mountain Rural purportedly calculates a CCL revenue requirement by multiplying its rate per line by the number of lines in service. As a rate-of-return carrier, Mountain Rural's rate-per-line appears to have been established in 1991 and has not been adjusted since that time.<sup>1</sup>

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<sup>1</sup> Mountain Rural's rate per line as set forth in its tariff is \$10.88 per line per month, which is the highest of all the issuing carriers in the Duo County Telephone Cooperative Corp., Inc. tariff. By comparison, Alltel Kentucky, Inc.'s (Kentucky Alltel's affiliate also serving small rural exchanges comparable to Mountain Rural) rate per line is \$2.51 per line per month.

4. Mountain Rural's tariffs states that the CCL revenue requirement is divided by the number of minutes for the relevant time period and that the resulting rate is assessed on a per minute of use basis. However, it is unclear and cannot be determined from the tariff alone whether Mountain Rural includes all minutes, including ACS minutes in the calculation. Indeed, carriers in Kentucky commonly exclude the assessment of CCL charges to ACS traffic and may consider only intraLATA toll minutes in the calculation of CCL rates. Mountain Rural in fact had such a long-standing agreement with Kentucky Alltel's predecessor, which Kentucky Alltel continued after its acquisition of the Kentucky properties in 2002.
5. Kentucky Alltel believes such agreements are in the public interest and states affirmatively that such an agreement was in place for many years between these parties. Nevertheless, Mountain Rural subsequently notified Kentucky Alltel of Mountain Rural's desire to begin assessing CCL charges to ACS traffic and thereby discouraging local calling between the parties' exchanges. Kentucky Alltel notified Mountain Rural of its willingness to discuss prospective changes to their long-standing agreement and remains willing to do so. However, before any CCL charge can be assessed with respect to ACS traffic, ample discovery of Mountain Rural's development of its CCL rates is necessary with respect to all periods asserted in Mountain Rural's Complaint. Therefore, Kentucky Alltel requests that the procedural schedule in this matter allow for ample discovery exchanges between the parties.
6. Despite Kentucky Alltel's willingness to resolve this issue amicably between the parties and its dispute of the assessment of CCL rates to ACS traffic, Mountain Rural filed its Complaint and notified Kentucky Alltel on May 12, 2006 that it would terminate service

for non-payment effective June 12, 2006. Kentucky Alltel requests that the Commission enjoin Mountain Rural from taking such action during the pendency of this matter.

7. Kentucky Alltel reserves the right to plead further in this matter as it deems necessary.

## II. Answer

8. Paragraphs 1 through 7 above are incorporated herein by reference.
9. Kentucky Alltel denies all allegations set forth in the Complaint unless specifically admitted herein.
10. Kentucky Alltel is without information sufficient to admit or deny Complainant's information in Paragraph 1 of the Complaint.
11. With respect to Paragraph 2 of the Complaint, Kentucky Alltel states that its address is 130 West New Circle Road, Suite 170, Lexington, Kentucky 40505 and affirms that it is an incumbent local exchange carrier ("ILEC") providing telecommunications services within the Commonwealth.
12. Kentucky Alltel denies the assertions set forth in Paragraphs 3 of the Complaint and states affirmatively that Mountain Rural is an issuing carrier in the tariff of Duo County Telephone Cooperative Corp, Inc.
13. With respect to Paragraphs 4 through 27 of the Complaint, Kentucky Alltel admits that it has operated in Kentucky since 2002 and that since that time, Kentucky Alltel and Mountain Rural have exchanged traffic. Kentucky Alltel denies all other allegations therein, specifically that BellSouth made payments on Kentucky Alltel's behalf to Mountain Rural.

14. With respect to Paragraphs 28 through 40 of the Complaint, Kentucky Alltel states that the authorities referenced are written documents which speak for themselves, and Kentucky Alltel denies all other assertions set forth therein.

15. Except with respect to traffic sensitive charges addressed above in the Motion to Dismiss, Kentucky Alltel denies that the relief requested by Mountain Rural is appropriate or warranted.

Wherefore, Kentucky Alltel, Inc. respectfully requests that the Commission dismiss with prejudice the portion of the Complaint addressing traffic sensitive charges; enjoin Mountain Rural from terminating service during the pendency of this dispute; establish a procedural schedule allowing for sufficient discovery with respect to Mountain Rural's rate development and allowable return; and grant all other relief to which Kentucky Alltel may be entitled.

Dated: May 30, 2006.

Respectfully submitted,

STITES & HARBISON

A handwritten signature in black ink, appearing to read 'Mark R. Overstreet', written over a horizontal line.

Mark R. Overstreet  
STITES & HARBISON PLLC  
421 W. Main Street  
P.O. Box 634  
Frankfort, KY 40602-0634  
(502) 223-3477  
[moverstreet@stites.com](mailto:moverstreet@stites.com)

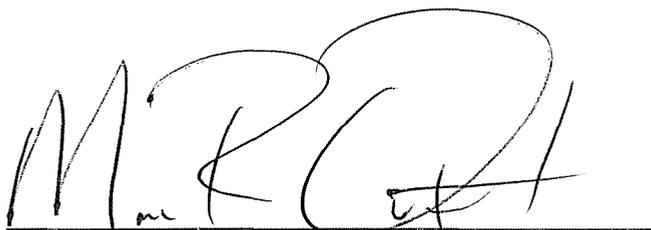
**CERTIFICATE OF SERVICE**

I hereby certify that a true and accurate copy of the foregoing was served via United States Postal Service, First Class Mail, postage prepaid, and electronic transmission upon the following:

John E. Selent  
Dinsmore & Shohl, LLP  
1400 PNC Plaza  
500 West Jefferson Street  
Louisville, Kentucky 40202  
e-mail: selent@dinslaw.com

Amy E. Dougherty  
Kentucky Public Service Commission  
211 Sower Boulevard  
P.O. Box 615  
Frankfort, Kentucky 40602-0615  
e-mail: aedougherty@ky.gov

on this the 30<sup>th</sup> day of May, 2006.



Mark R. Overstreet

**EXHIBIT A**



**ALLTEL Communications**  
**Wireline Revenue Accounting**  
One Allied Drive  
1269-B4F03-NC  
Little Rock, AR 72202-2099

**Mountain Rural Telephone COOP, Inc.**  
405 Main Street  
West Liberty, KY 41472

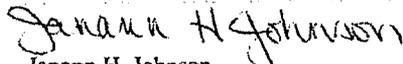
May 17, 2006

Enclosed are checks in the total amount of \$60,403.49, with respect to the intrastate/intralata traffic sensitive portion of the Mountain Rural CABS invoices for usage periods 11/26/05-4/24/06. Additionally, Angie Pennington forwarded information to me today regarding the facility circuits, and payment with respect to the facility invoices will follow upon verification of the circuit charges.

As documented in an email from John Bratton to Eileen Bodamer on 11/18/05 and in communications between the parties, Kentucky Alltel disputes the CCL charges on ACS traffic. Until the parties resolve the CCL dispute, which is currently subject to a complaint pending before the Kentucky Public Service Commission, Kentucky Alltel will remit payment to Mountain Rural only with respect to the traffic sensitive portion of the CABS invoices.

Please let me know if you have questions.

Sincerely,

  
Janann H. Johnson

Check # 2207917

Check Date 05/17/06

Vendor # 1198661

000007 930820  
Amount \$\*\*\*\*30,843.07

MOUNTAIN RURAL TELEPHONE COOP INC  
PO BOX 399  
405 MAIN STREET  
WEST LIBERTY KY 41472

MOUNTAIN RURAL TELEPHONE COOP INC 2207917

Invoice Date	Invoice Number	Description	Gross Amount	Discount Amount	Net Amount
020106	2	Moun2/06	30,843.07		30,843.07
			30,843.07		30,843.07

ALLTEL CORPORATION LITTLE ROCK, AR 72203

VERIFY THE AUTHENTICITY OF THIS MULTI-TONE SECURITY DOCUMENT.

CHECK BACKGROUND AREA CHANGES COLOR GRADUALLY FROM TOP TO BOTTOM.



ALLTEL CORPORATION  
PO BOX 3373  
AP HELPDESK (501) 905-7388

LITTLE ROCK, AR 72203

Check Number: 2207917

THIRTY THOUSAND EIGHT HUNDRED FORTY THREE AND 07/100 \*\*\*\*\*

Pay to the order of:

MOUNTAIN RURAL TELEPHONE COOP INC  
PO BOX 399  
405 MAIN STREET  
WEST LIBERTY KY 41472

Control Number

1198661

Date

05/17/06

Pay this Amount

\$\*\*\*\*30,843.07

NOT VALID AFTER 180 DAYS

Bank of America, N.A.  
Atlanta, Dekalb County, Georgia

*John Elmer*  
AUTHORIZED SIGNATURE

⑈02207917⑈ ⑆061112788⑆ 329 902 5355⑈

Check # 2207918

Check Date 05/17/06

Vendor # 1198661

000008 930821  
Amount \$\*\*\*\*10,060.45

MOUNTAIN RURAL TELEPHONE COOP INC  
PO BOX 399  
405 MAIN STREET  
WEST LIBERTY KY 41472

MOUNTAIN RURAL TELEPHONE COOP INC 2207918

Invoice Date	Invoice Number	Description	Gross Amount	Discount Amount	Net Amount
030106	3	Moun3/06	10,060.45		10,060.45
			-----	-----	-----
			10,060.45		10,060.45
ALLTEL CORPORATION LITTLE ROCK, AR 72203					

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ALLTEL CORPORATION  
PO BOX 3373  
AP HELPDESK (501) 905-7388

LITTLE ROCK, AR 72203

Check Number: 2207918

TEN THOUSAND SIXTY AND 45/100 \*\*\*\*\*

Pay to the order of:

MOUNTAIN RURAL TELEPHONE COOP INC  
PO BOX 399  
405 MAIN STREET  
WEST LIBERTY KY 41472

Control Number

1198661

Date

05/17/06

Pay this Amount

\$\*\*\*\*10,060.45

NOT VALID AFTER 180 DAYS

Bank of America, N.A.  
Atlanta, Dekalb County, Georgia

*John Elmer*  
AUTHORIZED SIGNATURE

⑈02207918⑈ ⑆061112788⑆ 329 902 5355⑈

Check # 2207919

Check Date 05/17/06

Vendor # 1198661

000009 930822  
Amount \$\*\*\*\*10,860.75

MOUNTAIN RURAL TELEPHONE COOP INC  
PO BOX 399  
405 MAIN STREET  
WEST LIBERTY KY 41472

MOUNTAIN RURAL TELEPHONE COOP INC 2207919

Invoice Date	Invoice Number	Description	Grdss Amount	Discount Amount	Net Amount
04/01/06	4	Houn4/06	10,860.75		10,860.75
			10,860.75		10,860.75
ALLTEL CORPORATION LITTLE ROCK, AR 72203					

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ALLTEL CORPORATION  
PO BOX 3373  
AP HELPDESK (501) 905-7388

LITTLE ROCK, AR 72203

Check Number: 2207919

TEN THOUSAND EIGHT HUNDRED SIXTY AND 75/100 \*\*\*\*\*

Pay to the order of:

MOUNTAIN RURAL TELEPHONE COOP INC  
PO BOX 399  
405 MAIN STREET  
WEST LIBERTY KY 41472

Control Number	Date	Pay this Amount
1198661	05/17/06	\$****10,860.75

NOT VALID AFTER 180 DAYS

Bank of America, N.A.  
Atlanta, DeKalb County, Georgia

AUTHORIZED SIGNATURE

02207919 061112788 329 902 5355

Check # 2207920

Check Date 05/17/06

Vendor # 1198661

000010 930823  
Amount \$\*\*\*\*\*8,639.22

MOUNTAIN RURAL TELEPHONE COOP INC  
PO BOX 399  
405 MAIN STREET  
WEST LIBERTY KY 41472

MOUNTAIN RURAL TELEPHONE COOP INC 2207920

Invoice Date	Invoice Number	Description	Gross Amount	Discount Amount	Net Amount
050106	5	Moun5/06	8,639.22		8,639.22
			8,639.22		8,639.22

ALLTEL CORPORATION LITTLE ROCK, AR 72203

VERIFY THE AUTHENTICITY OF THIS MULTI-TONE SECURITY DOCUMENT.

CHECK BACKGROUND AREA CHANGES COLOR GRADUALLY FROM TOP TO BOTTOM.



ALLTEL CORPORATION  
PO BOX 3373  
AP HELPDESK (501) 905-7388

LITTLE ROCK, AR 72203

Check Number: 2207920

EIGHT THOUSAND SIX HUNDRED THIRTY NINE AND 22/100 \*\*\*\*\*

Pay to the order of:

MOUNTAIN RURAL TELEPHONE COOP INC  
PO BOX 399  
405 MAIN STREET  
WEST LIBERTY KY 41472

Control Number

1198661

Date

05/17/06

Pay this Amount

\$\*\*\*\*\*8,639.22

NOT VALID AFTER 180 DAYS

Bank of America, N.A.  
Atlanta, DeKalb County, Georgia

*John Elmer*  
AUTHORIZED SIGNATURE

⑈02207920⑈ ⑆061112788⑆ 329 902 5355⑈

**FedEx** USA Airbill  
Express

FedEx Tracking Number **8369 2875 5543**

**1 From** Please print and print hard  
Date **5/17/06** Sender's FedEx Account Number **1638 1487 9**  
Sender's Name **Janann H Johnson** Phone ( **501** ) **905-8187**  
Company **ALLTEL COMMUNICATIONS**  
Address **1 ALLIED DR**  
City **LITTLE ROCK** State **AR** ZIP **72202**

**2 Your Internal Billing Reference**  
Fax 24 characters will appear on invoice.

**3 To**  
Recipient's Name \_\_\_\_\_ Phone ( ) \_\_\_\_\_  
Company **Mtn. Rural Telephone**  
Address **405 Main Street**  
City **West Liberty** State **KY** ZIP **40372**

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 FedEx Standard Overnight® Next business afternoon  
 FedEx First Overnight® Earliest next business morning delivery to select locations  
 FedEx 2Day® Second business day  
 FedEx Express Saver® Third business day

**4b Express Freight Service**  
 FedEx 10Day Freight® Next business day  
 FedEx 2Day Freight® Second business day  
 FedEx 3Day Freight® Third business day

**5 Packaging**  
 FedEx Envelope®  FedEx Pak® Includes FedEx Small Pak, FedEx Large Pak, and FedEx Study Pak  Other

**6 Special Handling:** include FedEx address in Section 3  
 SATURDAY Delivery Available ONLY for FedEx Priority Overnight and FedEx 2Day to select ZIP codes  
 HOLD Weekday at FedEx Location NOT Available for FedEx First Overnight  
 HOLD Saturday at FedEx Location Available ONLY for FedEx Priority Overnight and FedEx 2Day to select locations  
Does this shipment contain dangerous goods?  
 No  Yes At per attached Shipper's Declaration  Yes Shipper's Declaration not required  Dry Ice Dry Ice, 4, UN 1845  Cargo Aircraft Only

**7 Payment Bill to:** Enter FedEx Acct. No. or Credit Card No. below.  
 Sender Acct. No. in Section 1 will be billed.  Recipient  Third Party  Credit Card  Cash/Check

FedEx Acct. No. \_\_\_\_\_ Exp. Date \_\_\_\_\_  
Credit Card No. \_\_\_\_\_  
Total Packages \_\_\_\_\_ Total Weight \_\_\_\_\_ Total Declared Value® \$ \_\_\_\_\_ .00  
FedEx Use Only

**8 Release Signature** Sign to authorize delivery without obtaining signature.

By signing you authorize us to deliver the shipment without obtaining a signature and agree to indemnify and hold us harmless from any resulting claims. **447**

0227964682

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